SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 6D23-790
Lower Tribunal No. CF21-005407-XX

JOHNVONTE BELL,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Appeal from the Circuit Court for Polk County.
Catherine L. Combee, Judge.

June 14, 2023

COHEN. J,

Johnvonte Bell appeals his conviction of aggravated battery on a law enforcement officer.[1]

[1] This case was transferred from the Second District Court of Appeal to this Court on January 1, 2023.

On July 20, 2021, officers with the Lakeland Police Department attempted to pull Bell over for either an unregistered tag, failure to wear a seatbelt or because they detected the odor of cannabis emanating from Bell's car.[2] The four officers were all in an unmarked black SUV, wearing clothing which identified them as law enforcement. The SUV had red and blue track lights that were activated to effectuate the stop.

When Bell did not immediately comply, the officers pulled beside his car, "chirping" their siren and yelling at him to pull over. Bell stopped, and the SUV pulled in at an angle slightly in front of Bell's vehicle. As officers Jason McCain and Joseph Novis began exiting the SUV, they heard Bell rev his engine and saw him drive toward their vehicle. Both officers jumped back into the SUV. Bell's car hit the front passenger door but made no contact with any of the officers. Bell was subsequently charged with fleeing or attempting to elude, two counts of child abuse,[3] driving while license suspended or revoked, resisting officers with violence, two counts of aggravated assault on a law enforcement officer, as well as aggravated battery on a law enforcement officer.[4]

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[2] There was conflict in the testimony as to the basis of the initial stop; however, those conflicts are irrelevant to our disposition of this case.

[3] There were two children in the car with Bell during the incident.

[4] Only the conviction for Aggravated Battery is challenged on appeal.

After the close of evidence, Bell moved for a judgment of acquittal on the aggravated battery count, arguing that the evidence was insufficient to meet the touching requirement. The trial court denied the motion, noting that whether striking the outer body of the vehicle constitutes touching for purposes of battery is a question for the jury.

Section 784.045(1)(a), Florida Statutes (2021), provides that:

> (1)(a) A person commits aggravated battery who, in committing battery:
>
> > 1. Intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or
> >
> > 2. Uses a deadly weapon.

Statutes are not crafted to address every conceivable factual scenario. For example, section 784.045(1)(a) does not address whether or under what circumstances hitting another's car constitutes an aggravated battery. That has developed through case law.

In *Clark v. State*, 783 So. 2d 967, 968 (Fla. 2001), the occupant of a car testified that he was "spun" about because of the impact with Clark's vehicle. The Florida Supreme Court held that such evidence was sufficient to support a conviction for aggravated battery. The court rejected a per se rule that "intentional striking of an automobile can never constitute the touching of the vehicle's occupant . . . unless the occupant suffers some bodily injury." *Id.* Instead, the court held that it is

generally for the jury to determine "whether a vehicle is sufficiently closely connected to a person so that the striking of the vehicle would constitute a battery on the person." *Id.* at 969.[5]

For that question to get to the jury, however, the State must produce evidence that there was some connection between the force of the impact and its effect on the occupant. *See e.g.*, *Wingfield v. State*, 816 So. 2d 675, 677 (Fla. 2d DCA 2002) (holding that officers bracing for impact was found "sufficient to create a proper jury question").

In *V.A. v. State*, 819 So. 2d 847, 849 (Fla. 3d DCA 2002), the court found the evidence of a touching legally insufficient for aggravated battery when there was no testimony that the occupants were "jostled or otherwise moved about within their vehicle by the collision or braced themselves to protect against the impending impact." Likewise, in *Walker v. State*, 120 So. 3d 96, 99 (Fla. 4th DCA 2013), the court found that, despite the defendant hitting a pursuing patrol car twice, resulting in minor damage, when the State presented "no other testimony or evidence showing that the officer was physically affected in any way by the collision[,]" the State had not met its burden of proof. Whether the officer was jostled by the impact was a "matter of speculation." *Id.*

[5] The trial court relied on *Clark* when it denied Bell's motion.

Here, as in *Walker* and *V.A.*, the State adduced no testimony or evidence of a connection between the impact of the collision and a battery of any of the individual officers. There was, for example, no testimony or evidence that the officers were injured, moved about the vehicle, or even "jostled." The State did not even elicit information that the officers had to brace themselves for impact, or that the undercover car moved at all. The only testimony offered by the State related to the actions that occurred prior to Bell's car impacting the SUV, which established that McCain and Novis jumped back into the vehicle to avoid being struck.[6]

We do not suggest that any of these things may not have occurred; we are, however, compelled to reverse based on the record before us. Bell's motion for judgment of acquittal on aggravated battery on a law enforcement officer should have been granted. Because we reverse Bell's conviction on that charge, the parties agree that he is entitled to a new sentencing hearing.

REVERSED and REMANDED.

TRAVER, C.J., concurs.
MIZE, J., concurs in result only.

Howard L. "Rex" Dimmig, II, Public Defender, and Rache Paige Roebuck, Assistant Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and William C. Shelhart, Assistant Attorney General, Tampa, for Appellee.

[6] This was relevant to and formed the basis for the aggravated assault on a law enforcement charges.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING
AND DISPOSITION THEREOF IF TIMELY FILED